

SENATE BILL 91

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SB 53/97 - FIN

1998 Regular Session
8r0978

By: **Senator Middleton**
Introduced and read first time: January 16, 1998
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: February 23, 1998

CHAPTER _____

1 AN ACT concerning

2 **Consumer Protection - Health Club Services - Registration Renewal Fees,**
3 **Bonding Liability, and Payment of Claims**

4 ~~FOR the purpose of exempting certain persons who provide health club services from~~
5 ~~paying the annual registration renewal fee required under the Maryland Health~~
6 ~~Club Services Act. altering the annual registration renewal fee required under~~
7 ~~the Maryland Health Club Services Act for certain persons who provide health~~
8 ~~club services; excluding certain payments from the definition of "outstanding~~
9 ~~liabilities" for purposes of determining the amount of certain bonds required~~
10 ~~under the Maryland Health Club Services Act; requiring certain persons to~~
11 ~~provide certain notices and disclosures to consumers; prohibiting the Consumer~~
12 ~~Protection Division from paying certain claims filed by certain persons;~~
13 ~~providing for the application of this Act; and generally relating to altering~~
14 ~~certain registration renewal fees, bonding requirements, and requirements for~~
15 ~~payment of claims under the Maryland Health Club Services Act.~~

16 BY repealing and reenacting, with amendments,
17 Article - Commercial Law
18 Section 14-12B-02(b), (e), and (f) and 14-12B-06
19 Annotated Code of Maryland
20 (1990 Replacement Volume and 1997 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Commercial Law**

2 14-12B-02.

3 (b) (1) Each person who registers under this subtitle shall pay a registration
4 fee at the time of registration.

5 (2) ~~(1)~~ On September 1 of each year following the initial registration,
6 each registered person shall pay a renewal fee to the Division.

7 ~~(H) THE RENEWAL FEE REQUIRED UNDER SUBPARAGRAPH (I) OF~~
8 ~~THIS PARAGRAPH DOES NOT APPLY TO A REGISTERED PERSON WHO DOES NOT~~
9 ~~COLLECT MORE THAN 1 MONTH'S PAYMENT IN ADVANCE FROM THE BUYER OF THE~~
10 ~~HEALTH CLUB SERVICE.~~

11 (3) The fees for registration and renewal required under this subsection
12 shall be set by the Division:

13 (i) In an amount not exceeding \$800 for a person who is required to
14 purchase a surety bond or file an irrevocable letter of credit or cash under subsection
15 (e) of this section; ~~and~~

16 (ii) In an amount not exceeding \$150 for a person who:

17 1. is exempt from the requirement to purchase a surety bond
18 or file an irrevocable letter of credit or cash under subsection (e) of this section; AND

19 2. DOES NOT MEET THE REQUIREMENTS OF ITEM (III) OF
20 THIS PARAGRAPH; AND

21 (III) IN AN AMOUNT NOT EXCEEDING \$50 FOR A PERSON WHO:

22 1. IS EXEMPT FROM THE REQUIREMENT TO PURCHASE A
23 SURETY BOND OR FILE AN IRREVOCABLE LETTER OF CREDIT OR CASH UNDER
24 SUBSECTION (E) OF THIS SECTION;

25 2. DOES NOT CHARGE AN INITIATION FEE OR OTHER FEE
26 THAT IS NOT IDENTIFIED AS A PAYMENT FOR SPECIFIED FUTURE SERVICES;

27 3. DOES NOT CONTRACTUALLY OBLIGATE A BUYER OF
28 HEALTH CLUB SERVICES FOR MORE THAN 1 MONTH OF SERVICE; AND

29 4. DOES NOT COLLECT MORE THAN 1 MONTH'S PAYMENT IN
30 ADVANCE FROM A BUYER.

31 (4) The fees collected under this subsection may only be used for the
32 administration and enforcement of this subtitle.

33 (e) (1) (i) Subject to the provisions of paragraph (3) of this subsection, a
34 person who sells health club services agreements shall purchase a surety bond in an
35 amount not less than the aggregate value of outstanding liabilities to members.

1 including all prepaid fees, membership fees, dues, deposits, initiation fees, and fees
2 for health club services. For the purposes of this section, "liabilities" means the
3 moneys actually received in advance from the members less the prorated value of
4 services rendered by the health club facility. In the case of a lifetime contract, the
5 liabilities shall be calculated on a prorated basis for not more than 36 months.

6 (ii) The amount of the bond shall be based upon a report prepared
7 by an independent certified public accountant describing the health club's
8 outstanding liabilities to the members using accepted standard accounting principles.
9 In this section "outstanding liabilities" includes all amounts that would be required to
10 be refunded to members if the health club facility ceases operations. FOR ANY
11 MEMBERSHIP IN WHICH THE HEALTH CLUB FACILITY DOES NOT COLLECT EITHER
12 AN INITIATION FEE OF MORE THAN \$200 OR AN ADVANCE PAYMENT FOR MORE THAN
13 1 MONTH'S SERVICE FROM THE MEMBER, "OUTSTANDING LIABILITIES" DOES NOT
14 INCLUDE THE INITIATION FEE AND THE ADVANCE PAYMENT FOR 1 MONTH'S
15 SERVICE.

16 (iii) The report shall be submitted at the time of initial registration
17 and updated at each renewal under subsection (b) of this section.

18 (2) (i) The amount of the bond shall be increased, or may be decreased,
19 as necessary to take into account changes in the health club facility's outstanding
20 liabilities to members in the following cases, whichever comes first:

21 1. When the health club facility's outstanding liabilities to
22 members increase or decrease by \$10,000; or

23 2. On a quarterly basis.

24 (ii) If a registrant's outstanding liabilities to the members exceed
25 the amount of the bond, and the registrant has failed to increase the bond, then the
26 registrant shall immediately stop selling health club services agreements and shall
27 refrain from selling health club services agreements until the requirements of this
28 subsection have been satisfied.

29 (3) (i) An irrevocable letter of credit in a form acceptable to the
30 Division, or cash, may be filed with the Division instead of a surety bond.

31 (ii) Notwithstanding any other provision of this subtitle, a seller of
32 health club services agreements does not have to file or maintain a bond, letter of
33 credit, or cash in excess of \$200,000 per health club services facility. The bonding
34 requirement of this subsection applies to each location at which health club services
35 are sold in any case where a person operates or plans to operate more than one facility
36 within the State.

37 (f) (1) A buyer of health club services who suffers or sustains any loss or
38 damage by reason of the closing of a facility or bankruptcy by the seller of the health
39 club services agreement shall file a claim with the surety and, if the claim is not paid,
40 may bring an action based on the bond and recover against the surety. In the case of

1 a letter of credit or cash deposit that has been filed with the Division, the buyer may
2 file a claim with the Division.

3 (2) Any claim under paragraph (1) of this subsection shall be filed no
4 later than 1 year from the date on which the facility closed or bankruptcy was filed.
5 The Division shall notify each known buyer described in paragraph (1) of this
6 subsection about the procedure for filing a claim, unless the seller of the health club
7 services agreements has provided sufficient notice to each known buyer.

8 (3) The Division may file a claim with the surety on behalf of any buyer
9 in paragraph (1) of this subsection. The surety shall pay the amount of the claims to
10 the Division for distribution to claimants entitled to restitution and shall be relieved
11 of liability to that extent.

12 (4) The liability of the surety under any bond may not exceed the
13 aggregate amount of the bond, regardless of the number or amount of claims filed.

14 (5) If the claims filed should exceed the amount of the bond, the surety
15 shall pay the amount of the bond to the Division for distribution to claimants entitled
16 to restitution and shall be relieved of all liability under the bond.

17 (6) The Division may obtain reimbursement for postage and other
18 reasonable nonsalary expenses incurred in notifying buyers and distributing claims
19 by:

20 (i) Filing a priority claim for the expenses against the surety bond
21 posted by the seller; or

22 (ii) Applying to the expenses on a priority basis the proceeds of the
23 letter of credit or cash deposit posted by the seller with the Division.

24 (7) FOR ANY CLAIM UNDER PARAGRAPH (1), (3), OR (5) OF THIS
25 SUBSECTION, THE DIVISION MAY NOT PAY A CLAIM OF A BUYER THAT IS LESS THAN
26 \$5.

27 ~~[(7)]~~ (8) The provisions of this subsection do not apply where the buyer's
28 membership agreement provides for the transfer of membership privileges to a
29 comparable new or existing facility within a reasonable distance of the closed facility.
30 14-12B-06.

31 (a) A health club services agreement may not contain an automatic renewal
32 clause, unless the agreement provides for a renewal option for continued membership
33 which must be accepted by the buyer.

34 (b) (1) A buyer described in § 14-12B-01(b)(1)(i) of this subtitle may cancel a
35 health club services agreement within 3 business days after receipt of a copy of the
36 agreement by notifying the health club in writing. Written notification shall be
37 delivered in person or by certified mail, return receipt requested, bearing a postmark

1 from the United States Postal Service, and if mailed shall be postmarked by midnight
2 of the third business day.

3 (2) If the buyer cancels within 3 business days, the health club facility
4 shall refund any deposit, down payment, or payment on the agreement including any
5 initiation, deposit, membership, or other fees.

6 (3) Each contract for health club services shall conspicuously disclose
7 under the heading "Notice of Consumer Rights":

8 (i) The seller's health club registration number with the Division;

9 (ii) A description of whether the seller is bonded and the amount of
10 the bond or, if not bonded, an explanation of the basis for the seller's exemption from
11 the bonding requirements;

12 (III) IF THE SELLER IS BONDED, THE FOLLOWING STATEMENT: "IF
13 THIS FACILITY DOES NOT COLLECT EITHER AN INITIATION FEE OF MORE THAN \$200
14 OR AN ADVANCE PAYMENT OF MORE THAN 1 MONTH'S SERVICES FROM YOU, YOUR
15 PAYMENT IS NOT PROTECTED BY THE FACILITY'S BOND. IF, AT ANY TIME, THIS
16 FACILITY COLLECTS AN INITIATION FEE OF MORE THAN \$200 OR AN ADVANCE
17 PAYMENT FOR MORE THAN 1 MONTH'S SERVICE FROM YOU, THE FACILITY MUST
18 INCLUDE THOSE PAYMENTS IN DETERMINING THE AMOUNT OF THE BOND IT IS
19 REQUIRED TO POST WITH THE CONSUMER PROTECTION DIVISION.";

20 [(iii)] (IV) The buyer's right to cancel as defined in this section;
21 [and]

22 [(iv)] (V) The buyer's rights in the event of a disability or temporary
23 closing under § 14-12B-04 of this subtitle; AND

24 (VI) FOR THOSE PERSONS WHO REGISTER IN ACCORDANCE WITH §
25 14-12B-02(B)(3)(III) OF THIS SUBTITLE, A STATEMENT THAT THE FACILITY DOES NOT:

26 1. CHARGE AN INITIATION FEE OR OTHER FEE THAT IS NOT
27 IDENTIFIED AS A PAYMENT FOR SPECIFIC FUTURE SERVICES;

28 2. OBLIGATE THE BUYER TO PURCHASE MORE THAN 1
29 MONTH'S HEALTH CLUB SERVICES; OR

30 3. COLLECT MORE THAN 1 MONTH'S PAYMENT IN ADVANCE
31 FOR SERVICES.

32 (4) Each contract for the sale of health club services shall contain in a
33 form acceptable to the Division:

34 (i) A clear and conspicuous itemized description of any fees and
35 charges; and

1 (ii) If the facility is not in operation, the expected date of opening
2 and a description of the specific services and facilities that will be available upon
3 opening.

4 (C) A PERSON WHO REGISTERS IN ACCORDANCE WITH § 14-12B-02(B)(3)(III) OF
5 THIS SUBTITLE SHALL POST IN A CLEAR AND CONSPICUOUS MANNER A SIGN IN A
6 PROMINENT LOCATION IN EACH HEALTH CLUB FACILITY THAT THE PERSON OPENS
7 OR OPERATES THAT STATES THAT THE FACILITY DOES NOT:

8 (1) CHARGE AN INITIATION FEE OR OTHER FEE THAT IS NOT
9 IDENTIFIED AS A PAYMENT FOR SPECIFIC FUTURE SERVICES;

10 (2) OBLIGATE THE BUYER TO PURCHASE MORE THAN 1 MONTH'S
11 HEALTH CLUB SERVICES; OR

12 (3) COLLECT MORE THAN 1 MONTH'S PAYMENT IN ADVANCE FOR
13 SERVICES.

14 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act
15 do not apply to any initial registration or renewal of registration until September 1,
16 1997 1998.

17 SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
18 effect July 1, 1998.